

Labor Commissioner, State of California  
Department of Industrial Relations  
Division of Labor Standards Enforcement  
7718 Meany Ave.  
Bakersfield, CA 93308  
661-587-3072  
FAX: 661-587-3081



DATE:  
April 26, 2011

In Reply Refer to Case No:  
40-27870/010

### CIVIL WAGE AND PENALTY ASSESSMENT

Awarding Body City of China	Work Performed in County of San Bernardino
PROJECT NAME Concrete Repair	Project No. 2010-191
Prime Contractor Pivot Group Inc., A California Corporation	
Subcontractor	

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, the Division of Labor Standards Enforcement (the "Division") has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code section 1741, the Division hereby issues this Civil Wage and Penalty Assessment.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:

Violation of Labor Code Sections 1771 and 1774 for failure to pay wages to workers in the execution of this public work; Violation of Section 1815 for failure to pay overtime wages for work performed past 8 daily; Violation of Section 1777.5 for failure to make required training fund contributions for the classification of Cement Mason at the rate of \$0.45; Violation of Section 1776 for failure to provide certified payroll records within ten (10) days after receipt of written request, which was received on 1/3/11; penalties are assessed for the period 1/18/11 thru 4/26/11, a period of 97 days at \$475.00/day totaling \$46,075.00

The attached Audit Summary further itemizes the calculation of wages due and penalties under Labor Code sections 1775 and 1813.

The Division has determined that the total amount of wages due is: \$5,926.48

The Division has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: \$925.00

The Division has determined that the amount of penalties assessed against Pivot Group Inc. under Labor Code section 1776 is: \$46,075.00

Please refer to page 5 for specific withholding obligations pertaining to these amounts.

STATE LABOR COMMISSIONER

By

Sherry Gentry  
Deputy Labor Commissioner

PW 33 (Revised - 3/2009)

### Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code Section 1742, an affected contractor or subcontractor may obtain review of this Civil Wage and Penalty Assessment by transmitting a written request to the office of the Labor Commissioner that appears below within 60 days after service of the assessment. To obtain a hearing, a written Request for Review must be transmitted to the following address:

Labor Commissioner, State of California  
Civil Wage and Penalty Assessment Review Office  
2031 Howe Ave., Suite 100  
Sacramento, CA 95825

A Request for Review either shall clearly identify the Civil Wage and Penalty Assessment from which review is sought, including the date of the assessment, or it shall include a copy of the assessment as an attachment, and shall also set forth the basis upon which the assessment is being contested. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the Labor Commissioner's receipt of the written Request for Review.

**Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. Labor Code section 1743.**

In accordance with Labor Code section 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the State against the person assessed in the amount shown on the certified order.

(continued on next page)

### Opportunity for Settlement Meeting

In accordance with Labor Code section 1742.1(c), the Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of this Civil Wage and Penalty Assessment, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking a hearing as set forth above under the heading Notice of Right to Obtain Review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is in addition to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written Request for Review has already been made. Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested.

A written request to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding this assessment must be transmitted to Sherry Gentry  
at the following address: 7718 Meany Ave.  
Bakersfield, CA 93308

### Liquidated Damages

In accordance with Labor Code section 1742.1(a), after 60 days following the service of this Civil Wage and Penalty Assessment, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages in an amount equal to the wages, or portion thereof that still remain unpaid. If the assessment subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the Director of the Department of Industrial Relations that he or she had substantial grounds for believing the assessment or notice to be an error, the Director shall waive payment of the liquidated damages.

(continued on next page)

Notwithstanding the above, in accordance with Labor Code 1742.1(b), there shall be no liability of liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of the assessment or notice, for the Department to hold in escrow pending administrative and judicial review. The Department shall release such funds, plus any interest earned, at the conclusion of all administrative and judicial review to the persons and entities who are found to be entitled to such funds.

In lieu of a cash deposit, the contractor may post an undertaking with the Department in full amount of the CWPA. The undertaking shall be on the condition that, if any decision is issued by the Director upholding the CWPA in any regard, the employer (contractor) shall pay the amount owed pursuant to the decision the date the decision is final under Labor Code Section 1742 unless the parties have executed a settlement agreement for the payment of some other amount, in which case the contractor shall pay the amount that the contractor is obligated to pay under the terms of the settlement agreement. The undertaking must provide that if the contractor fails to pay the amount owed within 10 days of the date the decision is final or the execution of the settlement agreement, a portion of the undertaking equal to the amount owed, or the entire undertaking if the amount owed exceeds the undertaking, is forfeited to the Labor Commissioner to satisfy the amounts owed under the CWPA. A payment bond obtained by a contractor for the public works project which is the subject of the CWPA shall not be accepted as an undertaking unless the following two conditions are completely satisfied: (1) the payment bond provides for the payment of the full amount of the CWPA, including but not limited to, all wages, training, trust contributions, and penalties and (2) the conditions of payment set forth above are expressly agreed to by the affected contractor(s) and the surety which issued the payment bond. The undertaking should be forward to the Department as directed below. The Department's Accounting Office will hold the undertaking until the administrative and judicial review is completed. The disbursement of the bond funds will follow the same process as described above for a cash deposit.

Deposits must be made by check or money order payable to the Department of Industrial Relations with a letter and a copy of the Civil Wage and Penalty Assessment and mailed to:

Department of Industrial Relations  
Attention Cashiering Unit  
P.O. Box 420603  
San Francisco, CA 94142

The Amount of Liquidated Damages Available Under this Assessment is \$5,926.48

(continued on next page)

## Statutory Withholding Obligations

### 1. Awarding Body Withholding Obligations

In accordance with Labor Code section 1727(a), before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy this Civil Wage and Penalty Assessment. The amount required to satisfy this Civil Wage and Penalty Assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

The amount which must be withheld and retained by the awarding body pursuant to this Civil Wage and Penalty Assessment is:

Wages Due:	<u>\$5,926.48</u>
Penalties Due Under Labor Code sections 1775 and 1813:	<u>\$925.00</u>
Penalties Due Under Labor Code sections 1776:	<u>\$46,075.00</u>
Total Withholding Amount:	<u>\$52,926.48</u>

### 2. Prime Contractor Withholding Obligations:

In accordance with Labor Code section 1727(b), if the awarding body has not retained sufficient money under the contract to satisfy this Civil Wage and Penalty Assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. This amount shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

☐ If this box is checked, the Labor Commissioner hereby requests that the prime contractor withhold the following amount from money due the subcontractor and transfer the money to the awarding body to satisfy this assessment:

Wages Due:	<u>\$5,926.48</u>
Penalties Due Under Labor Code sections 1775 and 1813:	<u>\$925.00</u>
Penalties Due Under Labor Code sections 1776:	<u>\$46,075.00</u>
Total Withholding Amount:	<u>\$52,926.48</u>

Distribution:

Awarding Body  
Surety(s) on Bond  
Prime Contractor  
Subcontractor

RELEASE AGREEMENT

This Agreement is made as of this 30<sup>th</sup> day of August 2011, by the DIVISION OF LABOR STANDARDS ENFORCEMENT, Department of Industrial Relations, State of California (hereafter "DLSE"), in favor of PIVOT GROUP, INC. (hereafter "PIVOT") and AMERICAN CONTRACTORS INDEMNITY COMPANY (hereafter "AMERICAN") with reference to the following facts:

RECITALS

1. DLSE issued a Civil Wage and Penalty Assessment ("CWPA") dated April 26, 2011, in DLSE Case Nos. 40-27870/010 claiming wages in the amount of \$5,926.48 and other amounts to be due and owing by PIVOT and AMERICAN as a result of alleged violations of the California Labor Code involving workers employed by PIVOT on a project awarded by the City of Chino known as the Concrete Repair Project (hereafter "PROJECT").

2. AMERICAN filed a Request for Review of the CWPA which is now pending in the Matter of the Request for Review of: AMERICAN CONTRACTORS INDEMNITY COMPANY, Office of the Director-Legal (ODL) Case No. 11-0146-PWH with the Office of the Director, Department of Industrial Relations (hereafter "THE LITIGATION").

3. At the time it filed THE LITIGATION, AMERICAN made a deposit with the Department of Industrial Relations ("DIR") in the sum of \$52,926.48 ("THE ESCROW ACCOUNT"). THE ESCROW ACCOUNT is being maintained by the DIR and was submitted by AMERICAN with reference to CALIFORNIA LABOR AND MATERIAL PAYMENT BOND, BOND NO. 1000855227.

4. DLSE and AMERICAN have agreed to resolve all disputes concerning the CWPA identified above and THE LITIGATION as follows: Upon payment by AMERICAN to the DLSE of \$5,926.48 (the "SETTLEMENT AMOUNT"), DLSE will release and discharge AMERICAN and LABOR AND MATERIALS PAYMENT BOND, BOND NO. 1000855227 from the following

claims for money: Unpaid prevailing wages, apprenticeship training fees, liquidated damages under Labor Code section 1742.1 and monetary penalties under Labor Code sections 1775, 1776 and 1813 (including interest, costs and attorneys' fees) resulting from any work performed by workers employed by PIVOT on the PROJECT or identified by name on the audit summary which is attached hereto as Exhibit "A" (hereafter "CLAIMS").

5. AMERICAN shall pay the SETTLEMENT AMOUNT to the DLSE on or before Friday, September 16, 2011.

6. The DIR shall, within a reasonable amount of time release the monies held in THE ESCROW ACCOUNT and refund to AMERICAN the sum of \$52,926.48 plus interest, if any, upon payment of the SETTLEMENT AMOUNT to the DLSE.

7. The DLSE shall also reduce the amount of contract funds the DLSE is requiring the City of Chino to withhold and retain in accordance with the City of Chino's statutory withholding obligations and Labor Code section 1727(a) in the amount of \$5,926.48, and shall immediately notify the City of Chino that its statutory withholding obligations have been reduced by \$5,926.48.

#### AGREEMENT

NOW, THEREFORE, in consideration of payment to the DLSE in the amount of \$5,926.48 and for valuable consideration, the DLSE, on behalf of itself, the WORKERS and AMERICAN hereto agree as follows:

1. Each of the above Recitals is incorporated herein by this reference as though set forth in full.
2. In consideration and upon said payment to the DLSE in the amount of \$5,926.48, the DLSE hereby releases and forever discharges AMERICAN, their employees, officers, stockholders, successors and assigns, attorneys, agents and LABOR AND MATERIALS PAYMENT BOND, BOND NO. 1000855227 from all CLAIMS, as defined above, arising out of DLSE Case No. 40-



27870/010 ODL Case No. 11-0146-PWH, whether known or unknown, suspected or unsuspected. The SETTLEMENT AMOUNT described in this Agreement will be distributed solely as wages.

3. It is understood that this settlement involves the compromise of disputed claims and that this Release Agreement, as well as any payment in connection therewith shall not be deemed an admission of any liability whatsoever, or an admission of any violation of the rights of the WORKERS.

4. Each party to this Release Agreement hereto expressly warrants and represents that it is fully authorized to enter into this Release Agreement and each of its terms, and that it has not assigned to any other party or person any claims released herein.

5. Construction, performance, and enforcement of this Release Agreement shall be governed by the laws of the State of California.

6. If for any reason any provision contained in this Release Agreement is later deemed unenforceable, all remaining terms of this Release Agreement shall nonetheless remain fully binding and enforceable on the DLSE, the WORKERS and AMERICAN.

7. Notwithstanding the above, this Agreement shall not extinguish any rights and remedies the DLSE may have against PIVOT under the provisions of the Labor Code.

8. If any action at law or in equity is brought to enforce or interpret the provisions of this Release Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

9. Facsimiles/E-mails of the signatures on this Release Agreement shall be acceptable and treated as originals, and shall be admissible in the same manner as originals in any action or proceeding.

10. This Release Agreement may be executed in multiple originals or counterparts, each of which shall be deemed an original or the equivalent thereof.

11. Each of the undersigned has carefully read and understands the contents of this Release Agreement. Each of the undersigned has reviewed or has had the opportunity to review the terms of this Release Agreement with its attorney. In signing this Release Agreement, each of the undersigned is relying on its own investigation, judgment, belief, and knowledge and the advice of its counsel and is not relying on any representations or statements made by any other party or counsel for any other party to this Release Agreement.

Under penalty of perjury, the undersigned represents and warrants that he has full authority to execute this Release Agreement on behalf of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California, and that no legislative act or judicial act or approval is necessary to give effect to this Release.

DIVISION OF LABOR STANDARDS  
ENFORCEMENT Department of Industrial  
Relations State of California

Dated: September 2, 2011

By:   
DAVID L. BELL, Its Attorney

Under penalty of perjury, the undersigned represents and warrants that he has full authority to execute this Release Agreement on behalf of AMERICAN CONTRACTORS INDEMNITY COMPANY.

AMERICAN CONTRACTORS INDEMNITY  
COMPANY

Dated: September 2, 2011

By:   
COLLIN D. COOK, Its Attorney